New England Law Review

Volume Fourteen
1978 - 1979

Copyright © 1978, 1979
New England Law Review
Boston, Massachusetts

EDITORIAL BOARD

ARTHUR H. MILLER
Managing Editor

CHARLES W. BOHMFALK
Managing Editor

STEPHEN S. BIRNKRANT
CHARLES M. KOUTSOGIANE
Coordinating Editors

JESSE L. MATUSON
SHARON M. WARD
Case and Note Editors

PETER M. LESCHNER
ANDREW JAY VELCOFF
Lead Articles Editors

ANN M. MOSES
Book Review Editor

ALEX P. LANDY
Research Editor

GEORGE F. PHELAN
SUSAN TIUS
SARA M. WEBSTER
Senior Editors

MARGARET K. WHEELER
Technical Editor

STAFF

PAMELA J. ALIAPOULIOS
PETER L. BANIS
MARTINE CARROLL
STEPHEN D. DUGGAN
PATRICIA ELLIS
MICHAEL J. FARROW
JAMES M. FELIX
JOHN P. FITZGERALD
MARTIN CONROY FOSTER
JOHN M. HAYES
GERALD J. HUBBARD
WALLIS MCCANN KOUTSOGIANE

MARY BETH MCNAMARA
JEFFREY C. NEIMAN
ALAN R. NYE
JAY M. PABIAN
PAMELA E. PURCELL
CHARLES ROSENZWEIG
DENNIS M. RYAN
PETER SCHROETER
REYNOLD J. SNYDER
BARBARA K. SOBORSKI
RICHARD L. SWITZER
JOHN A. TAYLOR

JOSEPH J. BEARD
Faculty Advisor

RICHARD D. GOULD
Special Project Advisor

DEBORAH MCEACHERN
Secretary

BOARD OF TRUSTEES

HON. JAMES R. LAWTON, *Chairman*
HON. ANNA E. HIRSCH, *Vice-Chairman*
BRADBURY GILBERT, *Secretary*
GEORGE N. ASACK
JACOB ATWOOD
JOSEPH E. AYOUB
MARTIN S. BERMAN
HON. VINCENT R. BROGNA
ANNE G. CHAFFEE
JOHN F. X. DAVOREN
JEROME E. FALBO
HON. JAMES N. GABRIEL
CHARLES J. HAMILTON
DAVID E. HARRISON
JOHN R. JENNINGS
JOSEPH LORUSSO
EDWARD J. MCCORMACK, JR.
ALANE C. PROBST
HON. ROBERT H. QUINN
HON. JOHN D. SIMEONE
HELEN H. STEWART
A. LEAVITT TAYLOR
J. OWEN TODD
HAROLD M. UDELL
ABRAHAM P. YARCHIN

FACULTY

THOMAS C. FISCHER, *Dean and Professor of Law*
CORNELIUS F. DALY, *Associate Dean and Professor of Law*
FRANK S. H. BAE, *Librarian and Professor of Law*
JOSEPH J. BEARD, *Professor of Law*
C. RONALD CHESTER, *Professor of Law*
RICHARD B. CHILD, *Professor of Law*
TIMOTHY J. CRONIN, JR., *Professor of Law*
COLIN W. GILLIS, *Professor of Law*
RICHARD D. GOULD, *Professor of Law*
JEREMIAH F. HEALY, III, *Assistant Professor of Law*
HUGH D. MACGILL, *Visiting Professor of Law*
BRUCE G. MCNEILL, *Professor of Law*
BRIAN M. OLMSTEAD, *Assistant Professor of Law*
ROBERT E. O'TOOLE, *Professor of Law*
JACQUELINE Y. PARKER, *Instructor of Law*
STANLEY B. ROSENFIELD, *Professor of Law*
W. P. COLIN SMITH, JR., *Professor of Law*
ELIZABETH K. SPAHN, *Assistant Professor of Law*
VICTOR L. STREIB, *Associate Professor of Law*
DANIEL A. TICCIONI, *Professor of Law*
MICHAEL WHEELER, *Professor of Law*

ADJUNCT FACULTY

CARROL E. AYERS
ROBERT A. BARTON
ERWIN E. COOPER
JOHN T. DALEY
JAMES D. DEGIACOMO
JUDITH DIAMOND
MARIEN E. EVANS
SALVATORE FABIANO
MATTHEW FEINBERG
HON. JOHN P. FORTE
HARVEY W. FREISHTAT
PAULA M. GOLDEN
JAMES T. GRADY
WILLIAM J. GRANNON
ROBERT B. GRECO
PAMELA HORST
LINDA G. KATZ
HARRY J. LYNCH
BONNIE H. MCLEOD-GRIFFIN
PAUL MAGGIONI
DAVID M. MARCHAND
HON. A. DAVID MAZZONE
NORMAN NOVINSKY
MARTIN J. O'DONNELL
CHARLOTTE A. PERRETTA
WILLIS RICCIO
HON. MAURICE H. RICHARDSON
ALICE E. RICHMOND
SANDER RICKLEEN
CAMILLE F. SARROUF
FRANK J. SCHARAFFA
ABNER SISSON
IRWIN WEINER
JOSEPH WEINGARTEN

ARTICLES

PAGE

A Practical Guide to Drafting Massachusetts Wills
William F. Kehoe 486

Bastardized "F" Reorganizations — A Critical Look at Revenue Ruling 75-561
John H. Milne 169

Charitable Remainder Trusts: Tax Planning and Drafting Considerations
Thomas E. Peckham and Joan I. Milstein 442

Confidentiality Orders — The Proper Role of the Courts in Providing Confidential Treatment for Information Disclosed Through the Pre-Trial Discovery Process
Michael Dore 1

People v. Tanner: A Legal and Empirical Study in Sentencing
Jan Palmer and Marvin Zalman 82

Ralph Waldo Emerson, Mr. Justice Holmes and the Idea of Organic Form in American Law
Francis J. Mellen, Jr. 147

Standardized Forms: Unconscionability and Good Faith
Robert Dugan 711

Swiss Banking Secrecy and Its Legal Implications in the United States
Bernhard F. Meyer 18

The Community Trust Regulations — What Does It All Mean?
D. Charles Hair 755

The Dynamic Disclaimer
John J. Roche and Christopher T. Carlson 399

The Peremptory Challenge as a Manipulative Device in Criminal Trials: Traditional Use or Abuse
Frederick L. Brown, Frank McGuire and Mary W. Winters 192

ARTICLES: AUTHORS

PAGE

Brown, Frederick L., The Peremptory Challenge as a Manipulative Device in Criminal Trials: Traditional Use or Abuse 192

Carlson, Christopher T., The Dynamic Disclaimer 399

Dore, Michael, Confidentiality Orders — The Proper Role of the Courts in Providing Confidential Treatment for Information Disclosed Through the Pre-Trial Discovery Process 1

Dugan, Robert, Standardized Forms: Unconscionability and Good Faith 711

Hair, D. Charles, The Community Trust Regulations — What Does It All Mean? 755

Kehoe, William F., A Practical Guide to Drafting Massachusetts Wills 486

McGuire, Frank, The Peremptory Challenge as a Manipulative Device in Criminal Trials: Traditional Use or Abuse 192

Mellen, Francis J., Jr., Ralph Waldo Emerson, Mr. Justice Holmes and the Idea of Organic Form in American Law 147

Meyer, Bernhard F., Swiss Banking Secrecy and Its Legal Implications in the United States 18

Milne, John H., Bastardized "F" Reorganizations — A Critical Look at Revenue Ruling 75-561 169

Milstein, Joan I., Charitable Remainder Trusts: Tax Planning and Drafting Considerations 442

Palmer, Jan, People v. Tanner: A Legal and Empirical Study in Sentencing 82

Peckham, Thomas E., Charitable Remainder Trusts: Tax Planning and Drafting Considerations 442

Roche, John J., The Dynamic Disclaimer 399

Winters, Mary W., The Peremptory Challenge as a Manipulative Device in Criminal Trials: Traditional Use or Abuse 192

Zalman, Marvin, People v. Tanner: A Legal and Empirical Study in Sentencing 82

PROJECT

PAGE

Massachusetts Probate Reform — The Massachusetts Omnibus Probate Act and the Uniform Probate Code: A Comparative Study 513

NOTES

PAGE

Massachusetts Strict Products Liability Law: Alternate Route, Same Destination
Barbara K. Soborski 237

Recovery for Wrongful Conception: Who Gets the Benefit — The Parents or the Public?
Martine Carroll 784

Ski Operators and Skiers — Responsibility and Liability
Michael J. Farrow 260

CASE COMMENTS

PAGE

Commonwealth v. Cadwell: Deliberate Premeditation, Extreme Atrocity and Cruelty, and the Battered Child Syndrome — A New Look at Criminal Culpability in Massachusetts
Patricia Ellis 812

FCC v. National Citizens Committee for Broadcasting: FCC Cross Ownership Ban Upheld
Reynold J. Snyder 337

Penn Central Transportation Company v. City of New York: Landmark Preservation Eludes the "Taking" Clause
George F. Phelan 317

People v. Wheeler: Peremptory Challenges — A New Interpretation
Alan R. Nye 370

Right to Read Defense Committee of Chelsea v. School Committee of the City of Chelsea: The First Amendment Comes Off The Shelf
Alex P. Landy 288

RECENT DEVELOPMENTS

PAGE

Individual Employee Liability under Section 301 of the Labor Management Relations Act of 1947: *New York State United Teachers v. Thompson*
Wallis McCann Koutsogiane 848

Marshall v. Barlow's, Inc.
Stephen S. Birnkrant 119

BOOK REVIEWS — BOOKS

PAGE

CRIMINAL VIOLENCE, CRIMINAL JUSTICE, by CHARLES E. SILBERMAN
(Victor L. Streib) 861

PLANNING AN ESTATE, by HAROLD WEINSTOCK
(Richard D. Gould) 134

TAXATION OF THE MOTION PICTURE IINDUSTRY, by ROBERT C. KOPPLE and BRUCE M. STIGLITZ
(Joseph J. Beard) 390

THE ESTATE TAX, by JAMES B. LEWIS
(E. Lisk Wyckoff, Jr.) 701

THE LAW OFFICER'S POCKET MANUAL (1978 -79 ed.), by JOHN G. MILES, JR., DAVID B. RICHARDSON and ANTHONY E. SCUDELLARI
(Victor L. Streib) 140

BOOK REVIEWS: REVIEWERS

PAGE

Beard, Joseph J., TAXATION OF THE MOTION PICTURE INDUSTRY 390

Gould, Richard D., PLANNING AN ESTATE 134

Streib, Victor L., CRIMINAL VIOLENCE, CRIMINAL JUSTICE 861

Streib, Victor L., THE LAW OFFICER'S POCKET MANUAL (1978-79 ed.) 140

Wyckoff, E. Lisk, Jr., THE ESTATE TAX 701

BOOKS RECEIVED — CAPSULE REVIEWS

PAGE

A LEGAL GUIDE FOR RURAL HEALTH PROGRAMS, by *David G. Warren* 865

APPELLATE COURTS AND LAWYERS: INFORMATION GATHERING IN THE ADVERSARY SYSTEM, by *Thomas B. Marvel* 707

BAR ADMISSION RULES AND STUDENT PRACTICE RULES, ed. by *Fannie J. Klein, Steven H. Leleiko and Jane H. Mavity* 707

COPYRIGHT HANDBOOK, by *Donald F. Johnson* 864

CROSS-EXAMINATION IN CRIMINAL TRIALS, by *F. Lee Bailey and Henry B. Rothblatt* 708

IN RE ALGER HISS. PETITION FOR A WRIT OF CORAM NOBIS, ed. by *Edith Tiger* 866

INSIDE IRS — HOW INTERNAL REVENUE WORKS (YOU OVER), by *Jeff A. Schnepper* 393

JUDICIAL CRAFTSMANSHIP OR FIAT?: DIRECT OVERTURN BY THE UNITED STATES SUPREME COURT, by *Howard Ball* 142

LABOR RELATIONS YEARBOOK, *BNA Editorial Staff* 393

LIMITS OF JUSTICE: THE COURTS' ROLE IN SCHOOL DESEGREGATION, ed. by *Howard I. Kalodner and James J. Fishman* 142

MENTAL HEALTH ADVOCACY: AN EMERGING FORCE IN CONSUMERS' RIGHTS, ed. by *Louis E. Kopolow and Helene Bloom* 143

PRIMER OF EQUAL EMPLOYMENT OPPORTUNITY, by *Howard J. Anderson* 708

PROFILE OF THE LAW, by *James K. Gaynor* 394

STABILITY, SECURITY AND CONTINUITY: MR. JUSTICE BURTON AND DECISION-MAKING IN THE SUPREME COURT, 1945-1958, by *Mary Frances Berry* 143

SUPREME COURT PRACTICE, 5th Edition, by *Robert L. Stern and Eugene Gressman* 708

THE JUSTICES OF THE UNITED STATES SUPREME COURT: THEIR LIVES AND MAJOR OPINIONS. VOLUME V: THE BURGER COURT 1969-1978, ed. by *Leon Friedman* 864

THE NEGLIGENCE CASE: COMPARATIVE FAULT, by *Henry Woods* 394

THE UNIVERSITY AND THE STATE: WHAT ROLE FOR GOVERNMENT IN HIGHER EDUCATION?, ed. by *Sidney Hook, Paul Kurtz, Miro Todorovich* 144

TRUTH, LIE DETECTORS, AND OTHER PROBLEMS IN LABOR ARBITRATION, ed. by *James L. Stern and Barbara D. Dennis* 709

WEALTH REDISTRIBUTION AND THE INCOME TAX, ed. by *Arleen A. Leibowitz* 394

STATUTES CITED

Foreign Statutes

Swiss Banking Law of 1934, Art. 47 Bank G.....26, 80-1
Swiss Federal Law of Administration Procedure.....31
Swiss Federal Law of Civil Procedure.....31
Swiss Federal Law Concerning Execution of Debts & Bankruptcy.....35
Swiss Federal Rules of Criminal Procedure.....31
Swiss Penal Code, Art. 162, STGB...24
Swiss Penal Code, Art. 273, STGB...24
Swiss Penal Code, Art. 321, STGB..38, 39, 81

Federal Statutes

Administrative Procedure Act, 5 U.S.C. § 706(2)(A).....344
Bank Secrecy Act, 12 U.S.C. §§ 1730d, 1829b, 1951-59; 31 U.S.C. §§ 1051-122; 15 U.S.C. § 789..68-69, 70, 73, 79-80
Civil Rights Act of 1948, 18 U.S.C. § 243.....211
Civil Rights Act of 1957, 28 U.S.C. § 1861.....222
Copyright Law of 1909, 17 U.S.C. §§ 1-215.....864
1976 Copyright Law, 17 U.S.C. §§ 101-810.....864
Federal Communications Act of 1934, 47 U.S.C. §§ 151-609 (1976).....346, 350-51, 354, 359
Federal Election Campaign Act of 1971, 2 U.S.C. §§ 431-56.....355
Freedom of Information Act, 5 U.S.C. § 552.....866
Internal Revenue Code § 170(a)(1).....465
Internal Revenue Code § 170(b).....757, 758, 772, 777, 778, 789, 781, 782
Internal Revenue Code § 170(b)(1)(A).....455, 468, 469, 471, 483
Internal Revenue Code § 170(C).....449, 452, 455-56, 461-62, 468, 470-71
Internal Revenue Code § 170(c)(2)(A).....470
Internal Revenue Code § 172.....473
Internal Revenue Code § 332.....182
Internal Revenue Code § 334.....183
Internal Revenue Code § 355(b)(1).....185
Internal Revenue Code § 361.....183-84
Internal Revenue Code § 368(a)(1).....169, 171-172, 178, 179, 181, 184, 185-86
Internal Revenue Code § 381(b).....173, 175, 182-83, 190
Internal Revenue Code § 508(E).....464
Internal Revenue Code § 509(a).....757-58, 778-82
Internal Revenue Code § 512.....476
Internal Revenue Code § 514(C).....477
Internal Revenue Code § 642(c).....473
Internal Revenue Code § 642(d).....473
Internal Revenue Code § 641-43.....475
Internal Revenue Code § 644.....475, 483-84
Internal Revenue Code § 661.....473, 475
Internal Revenue Code § 644.....447, 450, 460, 465, 470, 474, 475, 483, 484-85
Internal Revenue Code § 664.....472, 474-77, 484
Internal Revenue Code § 664(A).....475

Internal Revenue Code
§ 664(c).....475
Internal Revenue Code
§ 664(d)(1).....484
Internal Revenue Code
§ 664(d)(1)(A).....460, 462, 463
Internal Revenue Code
§ 664(d)(1)(C).....469
Internal Revenue Code
§ 664(d)(2).....484
Internal Revenue Code
§ 664(d)(2)(A).....460
Internal Revenue Code
§ 664(d)(2)(C).....469
Internal Revenue Code
§ 664(d)(3).....484
Internal Revenue Code
§ 666(a).....484
Internal Revenue Code
§ 671.....475
Internal Revenue Code
§§ 671-678.....461
Internal Revenue Code
§ 677(a).....475
Internal Revenue Code
§ 721.....480
Internal Revenue Code
§ 721(a).....480
Internal Revenue Code
§ 731.....480
Internal Revenue Code
§ 731(a)(1).....480
Internal Revenue Code
§ 1023.....702
Internal Revenue Code
§ 1202.....473
Internal Revenue Code
§ 2001.....418
Internal Revenue Code
§ 2010.....418
Internal Revenue Code
§ 2031(b).....704, 764
Internal Revenue Code
§ 2032(a).....704
Internal Revenue Code
§ 2033(a)(2).....470
Internal Revenue Code
§ 2035.....402, 704
Internal Revenue Code
§ 2035(b).....705
Internal Revenue Code
§ 2038.....439
Internal Revenue Code
§ 2039.....705
Internal Revenue Code
§ 2040(c).....704
Internal Revenue Code
§ 2045.....703
Internal Revenue Code
§ 2055.....455, 459, 704
Internal Revenue Code
§ 2055(a).....470-72
Internal Revenue Code
§ 2055(e)(2)(a).....470
Internal Revenue Code
§ 2106.....459
Internal Revenue Code
§ 2514(b)(4).....425
Internal Revenue Code
§ 2518.....397-99, 401, 403, 405, 406, 416-27, 437-41, 703
Internal Revenue Code
§ 2522(a).....455, 471
Internal Revenue Code
§ 2611(b).....419
Internal Revenue Code
§ 2613.....417
Internal Revenue Code
§ 4940.....778
Internal Revenue Code
§ 4940(a).....757
Internal Revenue Code
§ 4941.....758-59, 764-65, 770
Internal Revenue Code
§ 4942.....464, 758, 759, 764-65, 770
Internal Revenue Code
§ 4943.....758-59, 764-65, 770
Internal Revenue Code
§ 4944.....758-59, 764-65, 770
Internal Revenue Code
§ 4945.....758-59, 764-65, 770
Internal Revenue Code
§ 4947.....774
Internal Revenue Code
§ 4947(a)(2).....463

Internal Revenue Code
§ 6166.....705
Internal Revenue Code
§ 6166(a).....705
Internal Revenue Code
§ 7701(a)(1).....418 422
Jury Selection and Service Act of 1968, 28 U.S.C. § 1862.....218
Labor Management Relations Act of 1947, § 301, 29 U.S.C. 185...848-57, 859-60
National Labor Relations Act 29 U.S.C. § 151-69.....851-52, 855
Revenue Act of 1971, 26 U.S.C. §§ 1-9021.....391
Revenue Act of 1978, 26 U.S.C. §§ 1-7803.....390, 701-02, 705
Securities Act of 1933, 15 U.S.C. §§ 77a-77aa.....37, 47
Securities Exchange Act of 1934, 15 U.S.C. §§ 78a-78hh (1976).....37, 48-50, 70
The Occupational Safety and Health Act of 1970, 29 U.S.C. § 657(a).....119-22, 124-28, 130-32
Tax Reform Act of 1976, 26 U.S.C. §§ 1-7701.....756, 776
Tax Reform Act of 1976, 26 U.S.C. §§ 1-8021.....390, 392, 701-03, 705
Tax Reform Act of 1976, 26 U.S.C. § 2009(e)(2).....426
Technical Corrections Act of 1979 (prospective) 703

State Statutes

Massachusetts

Mass. Anti-Lapse Statute, Mass. Gen. Laws Ann. ch. 191, § 22.....413-14, 497, 502, 548
Mass. Disclaimer Act, Mass. Gen. Laws Ann. ch. 191A.....397, 399, 400, 405-09, 411, 414-15, 418-26, 440-41
Mass. Omnibus Probate Act, Mass. Gen. Laws Ann. ch. 195, § 17...398, 413-14, 488, 507, 510, 514, 653-57, 680, 692, 697
Mass. Simultaneous Death Act, Mass. Gen. Laws Ann. ch. 190A, § 2...497, 507, 519
Mass. Ski Act, Mass. Gen. Laws Ann. ch. 143, §§ 71I-J, 71N-S.....285-87
Mass. Gen. Laws Ann. ch. 90, § 8.....500
Mass. Gen. Laws Ann. ch. 106, § 2-318.....247, 251
Mass. Gen. Laws Ann. ch. 113, § 10.....500
Mass. Gen. Laws Ann. ch. 113, §§ 7-13.....500
Mass. Gen. Laws Ann. ch. 114, § 31.....500
Mass. Gen. Laws Ann. ch. 190, § 1.....414, 523
Mass. Gen. Laws Ann. ch. 190, §§ 1-3.....489
Mass. Gen. Laws Ann. ch. 191, § 2.....527
Mass. Gen. Laws Ann. ch. 202.....657
Mass. Gen. Laws Ann. ch. 204.....657
Mass. Gen. Laws Ann. ch. 278, § 33E.....816, 817, 818, 821

Michigan

Mich. Comp. Laws Ann. §§ 769.8, 769.9.....97, 115
Mich. Stat. Ann. §§ 28.1080, 28.1081.....97

City Statutes

N.Y. Gen. City Law, § 96-a, N.Y.C. Admin. Code ch. 8a, § 205-07.....318-19, 324-25

Uniform Laws

Uniform Commercial Code
§ 1-102(3).....732
Uniform Commercial Code
§ 1-103.....743
Uniform Commercial Code
§ 1-201(3).....734, 737, 739, 743
Uniform Commercial Code
§ 1-201(11).....737
Uniform Commercial Code
§ 1-201(19).....736
Uniform Commercial Code
§ 1-203.....723, 725, 727, 736-38, 740, 749, 751
Uniform Commercial Code
§ 1-205.....712, 714, 722, 734, 750-51
Uniform Commercial Code
§ 1-208.....750
Uniform Commercial Code
§ 2-103(1).....743
Uniform Commercial Code
§ 2-103(1)(a).....736
Uniform Commercial Code
§ 2-103(1)(b).....728
Uniform Commercial Code
§ 2-106.....750
Uniform Commercial Code
§ 2-106(1).....737, 739, 743
Uniform Commercial Code
§ 2-201.....751
Uniform Commercial Code
§ 2-201(2).....714, 734
Uniform Commercial Code
§ 2-202.....712, 714, 718, 720, 722-23, 734, 751
Uniform Commercial Code
§ 2-204.....734
Uniform Commercial Code
§ 2-204(1).....743
Uniform Commercial Code
§ 2-204(3).....737-39
Uniform Commercial Code
§ 2-205.....724, 734, 738
Uniform Commercial Code
§ 2-206.....734
Uniform Commercial Code
§ 2-207.....712, 714, 718, 723, 734, 751
Uniform Commercial Code
§ 2-207(2).....720, 737, 743
Uniform Commercial Code
§ 2-207(2)(b).....724, 753
Uniform Commercial Code
§ 2-207(3).....737
Uniform Commercial Code
§ 2-207(4).....743
Uniform Commercial Code
§ 2-208.....712, 722, 734, 751
Uniform Commercial Code
§ 2-209(1).....743
Uniform Commercial Code
§ 2-209(2).....724, 738
Uniform Commercial Code
§ 2-302.....712, 718-20, 723, 725, 727-35, 751
Uniform Commercial Code
§ 2-302(1).....731
Uniform Commercial Code
§ 2-303.....733
Uniform Commercial Code
§ 2-305.....738
Uniform Commercial Code
§ 2-305(2).....747
Uniform Commercial Code
§ 2-306.....738
Uniform Commercial Code
§ 2-306(1).....747, 749, 751
Uniform Commercial Code
§ 2-306(2).....749, 751
Uniform Commercial Code
§ 2-309.....712, 735
Uniform Commercial Code
§ 2-309(2).....731
Uniform Commercial Code
§ 2-309(3).....732
Uniform Commercial Code
§ 2-311(1).....723, 727, 737, 738, 740, 742-48, 751, 753
Uniform Commercial Code
§ 2-313(1).....722
Uniform Commercial Code
§ 2-316.....751
Uniform Commercial Code
§ 2-316(1).....722, 723
Uniform Commercial Code
§ 2-316(2).....714, 723, 724, 753

Uniform Commercial Code
§ 2-318.....245-47, 251
Uniform Commercial Code
§ 2-328(4).....747
Uniform Commercial Code
§ 2-402(2).....747
Uniform Commercial Code
§ 2-403.....747
Uniform Commercial Code
§ 2-506(2).....747
Uniform Commercial Code
§ 2-508.....750
Uniform Commercial Code
§ 2-601.....750
Uniform Commercial Code
§ 2-603.....747, 750
Uniform Commercial Code
§ 2-603(3).....747
Uniform Commercial Code
§ 2-614.....750
Uniform Commercial Code
§ 2-615.....750
Uniform Commercial Code
§ 2-615(a).....750
Uniform Commercial Code
§ 2-615(b).....751
Uniform Commercial Code
§ 2-615(c).....751
Uniform Commercial Code
§ 2-702(3).....747
Uniform Commercial Code
§ 2-706.....747
Uniform Commercial Code
§ 2-706(1).....747-48
Uniform Commercial Code
§ 2-706(5).....747
Uniform Commercial Code
§ 2-712.....747
Uniform Commercial Code
§ 2-712(1).....747
Uniform Commercial Code
§ 2-718.....733
Uniform Commercial Code
§ 2-718(1).....724
Uniform Commercial Code
§ 2-719.....733, 735, 751, 753
Uniform Commercial Code
§ 2-719(2).....712, 714, 723-24
Uniform Commercial Code
§ 2-719(3).....712, 724, 731
Uniform Commercial Code
§ 9-501(3).....724
Uniform Probate Code
Art. II.....521, 530, 551
Uniform Probate Code
Art. III.....557
Uniform Probate Code
Art. V.....642, 679
Uniform Probate Code
§ 1-102.....622
Uniform Probate Code
§ 2-102.....518
Uniform Probate Code
§ 2-104.....519
Uniform Probate Code
§ 2-502.....521, 525-26, 530, 574
Uniform Probate Code
§ 2-504.....531
Uniform Probate Code
§ 2-505.....528
Uniform Probate Code
§ 2-508.....544
Uniform Probate Code
§ 2-602.....534-35
Uniform Probate Code
§ 2-603.....534
Uniform Probate Code
§ 2-605.....548
Uniform Probate Code
§ 2-606.....534, 541
Uniform Probate Code
§ 2-607.....534, 537
Uniform Probate Code
§ 2-609.....551
Uniform Probate Code
§ 2-610.....534, 539
Uniform Probate Code
§ 3-203.....631
Uniform Probate Code
§ 3-204.....558
Uniform Probate Code
§ 3-301.....552, 558, 562
Uniform Probate Code
§ 3-302.....559, 563
Uniform Probate Code
§ 3-303.....558

Uniform Probate Code
§ 3-304.....559
Uniform Probate Code
§ 3-305.....559
Uniform Probate Code
§ 3-306.....559, 562
Uniform Probate Code
§ 3-310.....560
Uniform Probate Code
§ 3-613.....601
Uniform Probate Code
§ 3-711.....572
Uniform Probate Code
§ 3-715.....566, 572-74, 620
Uniform Probate Code
§ 3-801.....579
Uniform Probate Code
§ 3-802.....582, 602
Uniform Probate Code
§ 3-803.....577, 591, 596-97, 599
Uniform Probate Code
§ 3-804.....580, 584-85, 589, 591
Uniform Probate Code
§ 3-806.....588-89, 591
Uniform Probate Code
§ 3-807.....593
Uniform Probate Code
§ 3-808.....680-90
Uniform Probate Code
§ 3-810.....597
Uniform Probate Code
§ 3-909.....574
Uniform Probate Code
§ 3-916.....697-99
Uniform Probate Code
§ 3-1004.....603
Uniform Probate Code
§ 3-1008.....599
Uniform Probate Code
§ 4-201.....612
Uniform Probate Code
§ 4-202.....615, 628
Uniform Probate Code
§ 4-203.....626
Uniform Probate Code
§ 4-204.....620
Uniform Probate Code
§ 4-205.....620
Uniform Probate Code
§ 4-206.....622, 624
Uniform Probate Code
§ 4-207.....620-21
Uniform Probate Code
§ 4-301.....631
Uniform Probate Code
§ 5-101.....675
Uniform Probate Code
§ 5-202.....641-43, 645-46
Uniform Probate Code
§ 5-203.....643, 648
Uniform Probate Code
§ 5-204.....644, 647
Uniform Probate Code
§ 5-207.....644
Uniform Probate Code
§ 5-209.....642
Uniform Probate Code
§ 5-212.....644-45
Uniform Probate Code
§ 5-401.....646-47
Uniform Probate Code
§ 5-404.....643, 645-46
Uniform Probate Code
§ 5-405.....646
Uniform Probate Code
§ 5-406.....647
Uniform Probate Code
§ 5-408.....650
Uniform Probate Code
§ 5-410.....642
Uniform Probate Code
§ 5-424.....642, 650, 674
Uniform Probate Code
§ 5-425.....650, 674
Uniform Probate Code
§ 5-431.....615
Uniform Probate Code
§ 5-432.....621
Uniform Probate Code
§ 5-502.....675, 690-96

CASES CITED

A

Aetna Casualty and Surety Co. v. United States.....179-81
Alloy Cast Steel Co. v. United Steelworkers.....856-57
Ashley v. Lester.....547-48
Associated Machine v. Commissioner.....173, 189
Associated Press v. United States...356
Atkinson v. Sinclair Refining Co. 856-57

B

Back v. Wickes Corps.....238-39, 252
Ball v. Mudge.....794
Berman v. Parker.....323-34
Bostwick v. Hurstel.....536-37
Brice v. State.....203
Brown v. Board of Education.....143
Brown v. Routzahn.....402, 428-29
Buckley v. Valeo.....355
Bushman v. Burns Clinic Medical Center 807-09

C

California Bankers Ass'n v. Shultz.....71-73, 75
Camara v. Municipal Court.....122-32
Cape Cod Bank and Trust Co. v. Cape Cod Hospital.....540
Carter v. Yardley & Co., Ltd....240-41
Castaneda v. Partida.....225-26, 233
Christensen v. Thornby....792-93, 803
Coleman v. Garrison.....790
Colonnade Catering Corp. v. United States.....129-31
Commissioner v. Bosch.....703
Commonwealth v. Cadwell.....812-47
Commonwealth v. Connolly...840, 843
Commonwealth v. Cutler.....819-20
Commonwealth v. Darden.....215
Commonwealth v. Devlin.....841-42
Commonwealth v. Lacy.....842
Commonwealth v. Martin.....215-16
Commonwealth v. Mazza.....837
Commonwealth v. McCusker....838-39
Commonwealth v. McHoul.....826-27
Commonwealth v. Jones.....216
Commonwealth v. Satterfield..833, 841
Commonwealth v. Soares.....230-31
Commonwealth v. Strother.828-29, 831
Comstock v. Bowles 567
Coruss v. Bowers.....431
Crone v. DiManno.....685
Custodio v. Bauer..802-03, 805-07, 809

D

Daly v. General Motors Corp....256-57
Davant v. Commissioner...172-73, 185
Davis v. Erickson.....264-67, 273
Durham v. United States.....822

E

Estate of Stauffer v. Commissioner 173
Estate of Dreyer v. Commissioner.....428, 432, 434
Estate of Hacbach v. Commissioner.436
Estate of Hoenig v. Commissioner.....428, 432, 434

F

Federal Communications Commission v. National Citizens Committee for Broadcasting.....338-69
Farmers Loan and Trust Company v. Wilson.....694-95

G

Gemza v. Mt. Snow Development Corp 263
Gordon v. Robinson.....588-89
Greenman v. Yuba Power Products, Inc. 248-49
Grosjean v. American Press Co..356-57

H

Harvard College v. Amorg.....568
Hays v. Hall.....795-96
Henningsen v. Bloomfield Motors, Inc.....244-45, 247
Hertrais v. Moore.....542-43
Hines v. Anchor Motor Freight, Inc. 857-58
Howland v. Slade.....547-48

I

In re duPont.....665

In re Great Lakes Broadcasting Co. 347
In re Estate of Mixter 432
Ish v. Crane 694

J

Jewett v. Commissioner 432-37, 441
Johnson v. Long 688

K

Kaufman v. State 264-66
Keinath v. Commissioner .. 429, 432-33, 436, 437, 441
Keefe v. Geanakos 298-300, 304

L

Lamont v. Postmaster General . 306, 308
Leopold v. Okemo Mountain, Inc. 275, 282-83
Loewe v. Lawlor 851, 852
Lyeth v. Hoey 703

M

MacPherson v. Buick Motor Co. 240
Mailloux v. Kiley 300-01
Marshall v. Barlow's, Inc. 119-33
Merrill v. Berlin 641
Metro-Goldwyn-Mayer v. Transamerica Corp. 49-50
Minarcini v. Strongsville City School District 310
Miranda v. Arizona 140
Morse v. State 274
Moulton v. Thompson 570
Mugler v. Kansas 327-28
Mullane v. Central Hanover Bank 648

N

National Citizens Committee for Broadcasting v. Federal Communications Commission ... 344
Necktas v. General Motors Corp. 247
New York State United Teachers v. Thompson 848-49, 853-60
Norris v. Alabama 199-200

O

O'Rourke v. Sullivan 571

P

Parducci v. Rutland 299-300, 304
Penn Central Transportation Company v. City of New York 318-36
Pennsylvania Coal v. Mahon 327
Performance Systems, Inc. v. United States 182
People v. Earegood 89
People v. Haggitt 89-91
People v. Jackson 819-20
People v. Lessard 89
People v. Snow 89
People v. Sinclair 90-91
People v. Steger 817, 834-36, 839
People v. Tanner 82-83, 91-118
People v. Wheeler .. 229-30, 233, 370-89
People v. White 380
Prescott v. Durfee 629
Presidents Council v. Community School Board 310

R

Red Lion Broadcasting v. FCC .. 306-08
Reliance Insurance Co. v. Barron's .. 11
Ridley v. State 202-03
Riggs v. Drago 697
Right to Read Defense Committee of Chelsea v. School Committee of the City of Chelsea 288-316
Rodgers v. United States Steel Corp. 10-11
Romy Hammes, Inc. v. Commissioner 174-75

S

See v. City of Seattle 122-28, 132
Shaheen v. Knight 793, 803
Sinclair Oil Corp. v. Oil Chemical and Atomic Workers 856-57
Smith v. Evening News Association . 849
Smith v. Texas 228
Stahlman v. FCC 349, 358
Stanley v. Georgia 307-08
Strange v. Powers 654, 656
State v. Baker 207-09
State v. Booker 206-08
State v. Collor 205-08
State v. Davis 207-08

State v. Davison.....204
State v. Gray.....212, 214
State v. Jack.....212, 214-15, 227
State v. Sikora.....829, 831
Strauder v. West Virginia.....195
Sunday v. Stratton Corp...264-72, 278, 282-83
Swain v. Alabama.....193, 196-233, 370-72, 374, 377-79, 383, 387, 388
Swartz v. General Motors Corp.....238-39, 252

T

Taylor v. Louisiana.379-80, 385-86, 389
Terrell v. Garcia.....794-96
Terry v. Ohio.....140
Textile Workers Union v. Lincoln Mills.....853-54
Tinker v. Des Moines Independent Community School District...301-02, 312
Troppi v. Scarf.....806-09

U

United States v. Biswell.....129-31
United States v. Brawner.....822, 826
United States v. Carlton.....211-12
United States v. Carter.....209-10
United States v. McDaniels.....217-18
United States v. Nelson.....209-10
United States v. Newman.....221
United States v. Pearson....203, 210-13
United States v. Robinson.....218, 227
United States v. Schackleford...194-95
United States v. Storer Broadcasting Co.....349-50

V

Vandermark v. Ford Motor Co.....249
Vegelahn v. Gunter.....163

W

Walsh v. Gillespie.....661
Winterbottom v. Wright.....239
Wright v. Mt. Mansfield Lift, Inc. 267-70

SUBJECT INDEX

Administrative Law
Marshall v. Barlow's, Inc. 119

Banks and Banking
Swiss Banking Secrecy and Its Legal Implications in the United States . . 18

Battered Child Syndrome
Commonwealth v. Cadwell: Deliberate Premeditation, Extreme Atrocity and Cruelty, and the Battered Child Syndrome — A New Look at Criminal Culpability in Massachusetts 812

Biography
Ralph Waldo Emerson, Mr. Justice Holmes and the Idea of Organic Form in American Law 135

Birth Control
Recovery of Wrongful Conception: Who Gets the Benefit — The Parents or the Public? 784

Charitable Trusts
Charitable Remainder Trusts: Tax Planning and Drafting Considerations 442
The Community Trust Regulations — What Does It All Mean? 755

Charities
The Community Trust Regulations — What Does It All Mean? 755

Child Abuse
Commonwealth v. Cadwell: Deliberate Premeditation, Extreme Atrocity and Cruelty, and the Battered Child Syndrome — A New Look at Criminal Culpability in Massachusetts 812

Civil Procedure
Confidentiality Orders — The Proper Role of the Courts in Providing Confidential Treatment for Information Disclosed Through the Pre-Trial Discovery Process 1

Commercial Law
Standardized Forms: Unconscionability and Good Faith 711

Communication
FCC v. National Citizens Committee for Broadcasting: FCC Cross Ownership Ban Upheld 337

Comparative Negligence
Massachusetts Strict Products Liability Law: Alternate Route, Same Destination 237

Constitutional Law
Marshall v. Barlow's, Inc. 119
Penn Central Transportation Company v. City of New York: Landmark Preservation Eludes the "Taking" Clause 317
People v. Wheeler: Peremptory Challenges — A New Interpretation 370
Right to Read Defense Committee of Chelsea v. School Committee of the City of Chelsea: The First Amendment Comes Off the Shelf . 288
The Peremptory Challenge as a Manipulative Device in Criminal Trials: Traditional Use of Abuse . . 192

Contraception
Recovery for Wrongful Conception: Who Gets the Benefit — The Parents or the Public? 784

Corporate Reorganization
Bastardized "F" Reorganizations — A Critical Look at Revenue Ruling 75-561 169

Criminal Law
Commonwealth v. Cadwell: Deliberate Premeditation, Extreme Atrocity and Cruelty, and the Battered Child Syndrome — A New Look at Criminal Culpability in Massachusetts 812

Criminal Procedure
Marshall v. Barlow's, Inc. 119
People v. Tanner: A Legal and Empirical Study in Sentencing 82
People v. Wheeler: Peremptory Challenges — A New Interpretation 370

The Peremptory Challenge as a Manipulative Device in Criminal Trials: Traditional Use or Abuse..192

Decedent's Estates

A Practical Guide to Drafting Massachusetts Wills.....486

Massachusetts Probate Reform — The Massachusetts Omnibus Probate Act and the Uniform Probate Code: A Comparative Study.....513

Discovery

Confidentiality Orders — The Proper Role of the Courts in Providing Confidential Treatment for Information Disclosed Through the Pre-Trial Discovery Process....1

Education

Right to Read Defense Committee of Chelsea v. School Committee of the City of Chelsea: The First Amendment Comes Off the Shelf.288

Eminent Domain

Penn Central Transportation Company v. City of New York: Landmark Preservation Eludes the "Taking" Clause.....317

Estate Planning

Charitable Remainder Trusts: Tax Planning and Drafting Considerations.....442

Massachusetts Probate Reform — The Massachusetts Omnibus Probate Act and the Uniform Probate Code: A Comparative Study.....513

The Dynamic Disclaimer.....399

Executors and Administrators

Massachusetts Probate Reform — The Massachusetts Omnibus Probate Act and the Uniform Probate Code: A Comparative Study.....513

Fair Trial

People v. Wheeler: Peremptory Challenges — A New Interpretation 370

The Peremptory Challenge as a Manipulative Device in Criminal Trials: Traditional Use or Abuse..192

Family Planning

Recovery for Wrongful Conception: Who Gets the Benefit — The Parents or the Public?.....784

Federal Rules of Civil Procedure

Confidentiality Orders — The Proper Role of the Courts in Providing Confidential Treatment for Information Disclosed Through the Pre-Trial Discovery Process....1

Foreign Law

Swiss Banking Secrecy and Its Legal Implications in the United States..18

Guardian and Ward

Massachusetts Probate Reform — The Massachusetts Omnibus Probate Act and the Uniform Probate Code: A Comparative Study.....513

Income Tax

Bastardized "F" Reorganizations — A Critical Look at the Revenue Ruling 75-561 169

Inheritance Estate and Gift Taxes

Charitable Remainder Trusts: Tax Planning and Drafting Considerations.....442

Massachusetts Probate Reform — The Massachusetts Omnibus Probate Act and the Uniform Probate Code: A Comparative Study.....513

The Dynamic Disclaimer.....399

Juries

People v. Wheeler: Peremptory Challenges — A New Interpretation 370

The Peremptory Challenge as a Manipulative Device in Criminal Trials: Traditional Use or Abuse..192

Jurisprudence

Ralph Waldo Emerson, Mr. Justice Holmes and the Idea of Organic Form in American Law.....147

Labor Law
Individual Employee Liability under section 301 of the Labor Management Relations Act of 1947: *New York State United Teachers v. Thompson* 848

Legal History
Ralph Waldo Emerson, Mr. Justice Holmes and the Idea of Organic Form in American Law 147

Negligence
Ski Operators and Skiers — Responsibility and Liability 260

Obscenity
Right to Read Defense Committee of Chelsea v. School Committee of the City of Chelsea: The First Amendment Comes Off the Shelf . 288

Penolgy
People v. Tanner: A Legal and Empirical Study in Sentencing 82

Probate Law and Practice
A Practical Guide to Drafting Massachusetts Wills 486
Massachusetts Probate Reform — The Massachusetts Omnibus Probate Act and the Uniform Probate Code: A Comparative Study 513

Products Liability
Massachusetts Strict Products Liability Law: Alternate Route, Same Destination 237

Punishment
People v. Tanner: A Legal and Empirical Study in Sentencing 82

Radio and Television
FCC v. National Citizens Committee for Broadcasting: FCC Cross Ownership Ban Upheld 337

Schools
Right to Read Defense Committee of Chelsea v. School Committee of the City of Chelsea: The First Amendment Comes Off the Shelf 288

Sentencing
People v. Tanner: A Legal and Empirical Study in Sentencing 82

Sports
Ski Operators and Skiers — Responsibility and Liability 260

Sterilization
Recovery for Wrongful Conception: Who Gets the Benefit — The Parents or the Public? 784

Taxation
Bastardized "F" Reorganizations: A Critical Look at Revenue Ruling 75-561 169
Charitable Remainder Trusts: Tax Planning and Drafting Considerations 442
The Community Trust Regulations — What Does It All Mean? 755
The Dynamic Disclaimer 399

Torts
Massachusetts Strict Products Liability Law: Alternate Route, Same Destination 237
Ski Operators and Skiers — Responsibility and Liability 260

Trusts and Trustees
Charitable Remainder Trusts: Tax Planning and Drafting Considerations 442
Massachusetts Probate Reform — The Massachusetts Omnibus Probate Act and the Uniform Probate Code: A Comparative Study 513
The Community Trust Regulations — What Does It All Mean? 755

Uniform Laws
Massachusetts Probate Reform — The Massachusetts Omnibus Probate Act and the Uniform Probate Code: A Comparative Study 513
Standardized Forms: Unconscionability and Good Faith 711

Unions
Individual Employee Liability under

section 301 of the Labor Management Relations Act of 1947: *New York State United Teachers v. Thompson* 848

Warranty

Massachusetts Strict Products Liability Law: Alternate Route, Same Destination 237

Wills

A Practical Guide to Drafting Massachusetts Wills 486

Massachusetts Probate Reform — The Massachusetts Omnibus Probate Act and the Uniform Probate Code: A Comparative Study 513

Zoning

Penn Central Transportation Company v. City of New York: Landmark Preservation Eludes the "Taking" Clause 317